

REMARKS

The present Continuation-in-Part Application relates to previously-filed U.S. Patent Application Serial No. 09/556,158 (Group Art Unit: 3623, Examiner: Boyce, Andre D., Filed April 21, 2000), hereinafter Previously-Filed Application.

In an Office Action mailed May 22, 2003 pertaining to the Previously-Filed Application, Examiner employed McCarty (Pub. No.: US 2002/0019699 A1, and Provisional App. No.: 60/193,241 filed March 30, 2000) to reject Claims 3 and 13, corresponding to current Claims 1 and 2, respectively. Examiner suggests that McCarty discloses map generation (¶ 0082 and 0087) sufficient to reject Claim 3. To reject Claim 13, Examiner suggests that McCarty discloses a weighing function sufficient to reject Claim 13 (¶ 0100).

Examiner employed Blalock (Pub. No.: US 2001/0047284 A1, and Provisional App. No.: 60/178,919, filed on February 1, 2000) to reject Claims 14, 15, and 16 of the Previously-Filed Application, which correspond to current Claims 3, 4, and 5, respectively. To reject previously-filed Claims 14 and 15, Examiner suggested that Blalock discloses a negotiation and bidding process where a user can accept and award bids to selected carriers (¶ 0060) and that it would be obvious to include a bidding system for the various carriers in O'Neill. Previously-filed Claim 16 was rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill as applied to Claim 15.

Examiner cited Guidice et al. (US Patent No. 6,463,420, having associated Provisional App. No.: 60/173,799 filed on December 30, 1999). However, Guidice et al. was apparently not employed by Examiner to reject Applicant's claims.

In the appended Continuation-In-Part Application, Applicant has retained claims rejected based on McCarty and Blalock, and further added claims based on claims of McCarty and Guidice. Current Claims 1-5 correspond to previously claimed but rejected subject matter. Current Claim 6 corresponds to Claim 1 of Guidice et al. Current Claims 7 and 8 correspond to Claims 1 and 43 of McCarty et al., respectively.

Applicant's Previously-Filed Application includes support for some or all of the claims of the present Application. Additional diagrams and corresponding discussions were added for elaboration. The date of invention of the present Application anti-dates McCarty, Blalock, and Guidice.

Affidavits are submitted with this Preliminary Amendment. The affidavits should be sufficient to swear back of the references under Rule 131 and should also be sufficient to enable interference proceedings as needed per 37 CFR 1.608 (b).

This Amendment also constitutes a statement in accordance with 37 CFR 1.608 (a) (see MPEP 2308). Applicant hereby alleges that a basis exists upon which Applicant may be entitled to a judgement relative to the Patentee of Guidice. Particularly, Applicant was involved in discussions, as indicated by the appended Affidavits prior to the Dec. 30 1999 filing date associated with Guidice, wherein a system, which is sufficient to read upon the claims of Guidice, was disclosed.

Applicant requests that before declaring an interference that Examiner contact Applicant, such as by telephone (30-452-4579), as Applicant may have decided not to pursue the interference due to time constraints or other strategic considerations.

Rejections based on O'Neill in view of McCarty

To reject previously-filed Claim 13, which corresponds now to Claim 2, Examiner relies on O'Neill in view of McCarty. Examiner suggests that McCarty discloses a weighing function applied to service providers (i.e., delivery agents) to determine preferred providers over other competitors (¶ 0100) and that it would be obvious to combine the teachings of McCarty and O'Neill.

McCarty specifically states (see (¶ 0100)):

"In a competitive environment, it is preferred that a telecommunications service provider utilize the services of another provider that poses the least threat to the telecommunication service provider's market position. A weighting function can be applied to all

providers in a service area to prioritize preferred providers over, for example, competitors." (Emphasis added.)

Hence, McCarty does not discuss prioritizing delivery agents, but rather telecommunications service providers of facilities and/or services, which is analogous to ranking outlets and is entirely different than ranking delivery agents that are independent from the outlets or providers. It is not obvious to prioritize independent delivery agents in view of McCarty. If it were obvious, then such prioritization would have been implemented in a cohesive system, since the significant advantages of reduced delivery fees, improved delivery times, and so on may be afforded thereby.

Furthermore, even if McCarty did disclose use of a weighting function applied to delivery agents, McCarty does not disclose use of a weighting formula that includes "means for enabling a customer to specify priorities associated with each of said selection criteria and providing a signal in response thereto." as recited in Claim 13. McCarty does not teach, disclose, or suggest use of a weighting formula as applied to priorities, enabling one to assign different weights to different priorities. McCarty discloses at most a weighting function that ranks a service provider by assigning a weight thereto, the rank or weight determined by the degree of competitive threat posed by the telecommunications service provider being ranked. Ranking a service provider by assigning a weight thereto is significantly different than applying weights to priorities, thereby effectively ranking priorities (see page 15, lines 13-15 of the Application as filed).

I hereby certify that this correspondence is being deposited with the United States Patent and Trade Mark Office via fax or Express Mail on January 22, 2004.

Respectfully submitted,

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